

THE HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K. and
T.D.,

Plaintiffs,

vs.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/d/a "MORMON CHURCH,"; LDS
SOCIAL SERVICES a/d/a LDA FAMILY
SERVICES, a Utah corporation,

Defendants.

NO. C04-2338RSM

**DECLARATION OF MICHELLE A.
MENELY RE: PLAINTIFF R.K.'S
OPPOSITION TO DEFENDANTS'
MOTION TO SEGREGATE DAMAGES
RESULTING FROM INTENTIONAL
SEXUAL ABUSE**

**NOTE ON MOTION CALENDAR:
AUGUST 18, 2006**

MICHELLE A. MENELY, being first duly sworn on oath, deposes and states:

1. I am one of the attorneys for the plaintiff in the above-referenced matter; I make this declaration based on my own personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Order Granting Plaintiffs Motion for Partial Summary Judgment in the case of *Christensen v. Royal Sch. District No. 160*, U.S.D.C, Eastern District of Washington, cause No. CV-02-185FVS.

MENELY DECL. ER: PLTF'S OPP. TO SEGREGATE DAMAGES - 1 of 2
(C04-2338RSM)
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1 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
2 TRUE AND CORRECT.

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4 DATED at Seattle, Washington, this 14th day of August, 2006.

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6 
7 Michelle A. Menely

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LESLIE CHRISTENSEN, et al.,
Plaintiffs,

v.

ROYAL SCHOOL DISTRICT NO. 160, et
al.,
Defendants.

No. CV-02-185-FVS

ORDER GRANTING PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT

BEFORE THE COURT is Plaintiffs' Motion for Partial Summary Judgment Against Royal School District and Preston Kent Andersen (Ct. Rec. 47). Plaintiffs Gary and Kim Christensen are represented by Eugene Annis and Tami Wilcox. Plaintiff Leslie Christensen is represented by Robert Crotty and Matt Zuchetto. Defendant Royal School District is represented by Brian Christensen, Jennifer Homer, and Jerry Moberg. Defendant Steven Diaz is represented by David Soderland. Defendant Preston Kent Andersen ("Principal Andersen") is represented by Brian Christensen, Jennifer Homer, Michael McFarland, and Heather Yakely.

BACKGROUND

Plaintiff Leslie Christensen asserts claims against Defendants Royal School District and Principal Andersen for violations of Title IX, 20 U.S.C. § 1681, et seq., and 42 U.S.C. § 1983. Under Washington

1 state law, Plaintiff asserts claims against Royal School District and
2 Principal Andersen for (1) retaliation and creating a sexually hostile
3 educational environment in violation of Washington's Law Against
4 Discrimination ("WLAD"), RCW 49.60; (2) negligent hiring and
5 supervision of Mr. Diaz; (3) negligence in failing to protect
6 Plaintiff from sexual abuse by Mr. Diaz; and (4) intentional and
7 negligent infliction of emotional distress. Plaintiffs Gary and Kim
8 Christensen assert a loss of consortium claim against Defendants Royal
9 School District and Principal Andersen.

10 Plaintiffs move for partial summary judgment prohibiting
11 Defendants Royal School District and Principal Andersen from
12 allocating liability to Defendant Steven Diaz, the alleged intentional
13 tortfeasor, or to Plaintiff Leslie Christensen. Plaintiffs' motion
14 for partial summary judgment was filed on July 31, 2003. On September
15 29, 2003, the Court granted Defendants' motion to certify and stayed
16 this action pending certification to the Washington Supreme Court of
17 the issue of whether the Plaintiff Leslie Christensen could be
18 attributed comparative fault with respect to the negligence actions
19 against Defendants Royal School District and Principal Andersen. The
20 Court's Order staying this action also vacated the existing scheduling
21 order and struck the hearing on Plaintiffs' pending motion for partial
22 summary judgment. (Ct. Rec. 81). On January 6, 2006, the Court
23 received a certificate of finality from the Washington Supreme Court.
24 The Washington Supreme Court held that "contributory fault may not be
25 assessed against a 13-year-old child when that child brings a civil
26 action against a school district and school principal for sexual abuse

1 by her teacher." *Christensen v. Royal Sch. Dist. No. 160*, 156 Wash.2d
2 62, 72-73, 124 P.3d 283, 288 (2005). Thereafter, the Court lifted the
3 stay in this action, and on February 1, 2006, the Court held a
4 telephonic scheduling conference for purposes of setting this action
5 back on the Court's trial calendar. Plaintiffs' partial motion for
6 summary judgment, however, was never re-noted for hearing after the
7 Court lifted the stay. Thus, the Court was unaware the motion
8 remained pending until Plaintiffs' counsel brought the issue to the
9 Court's attention in a telephonic status conference held on July 21,
10 2006.

11 With respect to Leslie Christensen, Plaintiffs' motion for
12 partial summary judgment was resolved by the Supreme Court's ruling.
13 The remaining issue before the Court is Plaintiffs' request for an
14 order prohibiting Royal School District and Principal Andersen from
15 allocating fault or liability for their negligence to the intentional
16 tortfeasor, Steven Diaz. Relying on *Tegman v. Accident & Medical*
17 *Investigations, Inc.*, 150 Wash.2d 102, 75 P.3d 497(2003), Defendants
18 contend the Court must instruct the jury to apportion liability
19 between Royal School District and Steven Diaz by segregating any
20 damages due to the intentional conduct of Steven Diaz from the damages
21 due to the negligence of Royal School District and Principal Andersen.
22 The Court allowed both parties to submit supplemental briefing
23 addressing *Tegman*. At that time, Steven Diaz was a party to this
24 action. Plaintiffs, however, recently advised the Court that they
25 entered into a settlement with Steven Diaz and he will not be a party
26 to this lawsuit at the time of trial.

1 In *Tegman*, the trial court awarded the plaintiff damages against
2 multiple defendants, including damages caused both by the intentional
3 tortfeasor and the negligent tortfeasors. The Washington Supreme
4 Court remanded, holding that under Washington's Tort Reform Act, RCW
5 4.22.070, "the damages resulting from negligence must be segregated
6 from those resulting from intentional acts, and the negligent
7 defendants are jointly and severally liable only for the damages
8 resulting from their negligence. They are not jointly and severally
9 liable for damages caused by intentional acts of others." *Tegman*, 150
10 Wash.2d at 105, 75 P.3d at 497.

11 *Tegman* involved a case where both intentional tortfeasors and
12 negligent tortfeasors were named defendants in the action. Here,
13 however, the intentional tortfeasor will not be a party to the lawsuit
14 at the time of trial. In this case the jury will only be required to
15 address Plaintiffs' claims against Defendants Royal School District
16 and Principal Andersen, the alleged negligent tortfeasors. Therefore,
17 the joint and several liability issue addressed by the court in *Tegman*
18 does not present itself here. Accordingly, *Tegman* is not applicable.

19 The issue before the Court is controlled by *Welch v. Southland*
20 *Corp.*, 134 Wash.2d 629, 952 P.2d 162 (1998). In *Welch*, the trial
21 court held that the defendant was entitled to apportion liability to
22 an assailant who shot and injured the plaintiff at one of the
23 defendant's convenience stores. 134 Wash.2d at 163, 952 P.2d at 630.
24 The Washington Supreme Court reversed, holding that because
25 intentional acts are not included under the current statutory
26 definition of fault, "a defendant is not entitled to apportion

1 liability to an intentional tortfeasor." *Id.* Similarly, Defendants
2 Royal School District and Principal Andersen may not apportion
3 liability to Steven Diaz. On this basis, Plaintiffs' motion for
4 partial summary judgment is granted. Accordingly,

5 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Partial Summary
6 Judgment (**Ct. Rec. 47**) is **GRANTED**.

7 **IT IS SO ORDERED.** The District Court Executive is hereby
8 directed to enter this Order and furnish copies to counsel.

9 **DATED** this 3rd day of August, 2006.

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11 s/ Fred Van Sickle
Fred Van Sickle
United States District Judge
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